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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,635	06/05/2002	George R. Garrick	005386.P001R	6105

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EXAMINER

WINDER, PATRICE L

ART UNIT	PAPER NUMBER
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2145

DATE MAILED: 03/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/029,635

Applicant(s)

GARRICK ET AL.

Examiner

Patrice Winder

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 18-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group I in the reply filed on October 27, 2004 is acknowledged
2. The examiner has reviewed applicant's remarks concerning "constructively elected", but would like to point out MPEP §1450 as being specific to reissue applications.

### ***Reissue Applications***

3. This application is objected to under 37 CFR 1.172(a) as the assignee has not established its ownership interest in the patent for which reissue is being requested. An assignee must establish its ownership interest in order to support the consent to a reissue application required by 37 CFR 1.172(a). The assignee's ownership interest is established by:

(a) filing in the reissue application evidence of a chain of title from the original owner to the assignee, or

(b) specifying in the record of the reissue application where such evidence is recorded in the Office (e.g., reel and frame number, etc.).

The submission with respect to (a) and (b) to establish ownership must be signed by a party authorized to act on behalf of the assignee. See MPEP § 1410.01.

An appropriate paper satisfying the requirements of 37 CFR 3.73 must be submitted in reply to this Office action. (The additional documentation provided on

November 18, 2003 does not provide the "reel and frame number" as stated by applicant.)

***Claim Rejections - 35 USC § 102***

4. The text of those sections of Title 35, U.S. Code 102 not included in this action can be found in a prior Office action.

5. Claims 1-10, 12-15, 17 and 30 are rejected under 35 U.S.C. 102(e) as being anticipated by Robinson, USPN 5,918,014 (hereafter referred to as Robinson).

6. Regarding claim 1, Robinson taught a process for measuring effectiveness of a web site having a test web page (column 4, lines 58-61),  
the process comprising:

having a plurality of versions of the test web page (different visitors to a Web page see different Smart Ads, column 4, lines 8-13, 39-42);

distributing requests to the various versions of the test web page according to a predetermined distribution function (column 4, lines 25-30, 44-53); and

counting visits to one or more hyperlinks from each version of the test page to determine a relative effectiveness of each version of the test web page (column 3, line 67 – column 4, line 6, column 4, lines 58-61).

7. Regarding dependent claim 2, Robinson taught said predetermined distribution function is a sequential function (column 3, lines 3-7, column 4, lines 51-53).

8. Regarding dependent claim 3, Robinson taught said predetermined distribution function is a random function (column 3, lines 3-7, column 4, lines 51-53).

9. Regarding dependent claim 4, Robinson taught distributing requests comprises:

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receiving requests for the test web page (user makes a request for hosting web site, column 4, lines 39-42);

directing said request to one of the versions of the test web pages in accordance with the predetermined function (column 4, lines 44-53).

10. Regarding dependent claim 5, Robinson taught further comprising:

repeating the process (column 4, lines 1-6);

after a period, evaluating a success of each version of the test page (column 16, lines 53-58); and

selecting a version having a highest success rate, and setting the test web page to the selected version (column 16, lines 59-67).

11. Regarding claim 6, Robinson taught a process for directing requests for a test web page having predetermined universal resource location (URL) (column 4, lines 39-46) comprising:

having a plurality of versions of the test web pages (different visitors to a Web page see different Smart Ads, column 4, lines 8-13, 39-42);

distributing requests to a version of the test web page according to a predetermined distribution function wherein said requests are distributed by directing requests for said test page to one or more versions of the test page in accordance with a predetermined distribution function (column 4, lines 25-30, 44-53); and

measuring a relative effectiveness of each version of the test web site, based on this success percentage (column 3, line 67 – column 4, line 6, column 4, lines 58-61).

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12. Regarding dependent claim 7, Robinson taught said predetermined distribution function is a random function (column 3, lines 3-7, column 4, lines 51-53).

13. Regarding dependent claim 8, Robinson taught said predetermined distribution function is a sequential function (column 3, lines 3-7, column 4, lines 51-53).

14. Regarding claim 9, Robinson taught a method of measuring the effectiveness of a web page having different versions, the method comprising:

displaying a version of the web page to a user (different visitors to a Web page see different Smart Ads, column 4, lines 44-47), the version selected according to a predetermined function (column 4, lines 25-30, 47-53);

for each version of the web page, counting occurrences of desired behavior of the user to track the effectiveness of that version of the web site (column 3, line 67 – column 4, line 6, column 4, lines 58-61).

15. Regarding dependent claim 10, Robinson taught further comprising upon completion of testing:

identifying an effective version of the web page based on the percentage of success of achieving the desired behavior (column 4, lines 1-6); and

setting the web page to a most effective version of the web page (column 16, lines 53-67).

16. Regarding dependent claim 12, Robinson taught versions of the web page may differ in one or more of the following: layout, images, content, links, hypertext elements, complexity (column 4, lines 8-13).

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17. Regarding dependent claim 13, Robinson taught each version of the web page only varies in one feature, such that each feature of the web page is independently tested for effectiveness (column 4, lines 8-13, 44-50).

18. Regarding dependent claim 14, Robinson taught the most effective version of the web page includes each feature having a highest rate of occurrences of the desired behavior (column 4, lines 1-6, column 9, lines 24-35).

19. Regarding dependent claim 15, Robinson taught the versions of the web page may be generated on-the-fly, when a request for the web page is received (column 4, lines 39-42).

20. Regarding dependent claim 17, Robinson taught the successful response comprises one or more of the following: reading the web page, following a link, purchasing an item, filling-in a form, interacting with the web page, downloading data from the web page (column 9, lines 24-35).

21. Regarding claim 30, Robinson taught a computer data signal embodied in a carrier wave (column 1, lines 16-24) comprising:

a web page display code segment to display a version of the web page to a user (column 4, lines 44-47), the version selected from a plurality of versions of the web page according to a predetermined distribution function (different visitors to a Web page see different Smart Ads, column 4, lines 8-13, 25-30, 47-53);

an evaluation code segment to count the occurrence of a desired behavior of the user to track the effectiveness of each version of the web page (column 3, line 67 – column 4, line 6, column 4, lines 58-61).

***Claim Rejections - 35 USC § 103***

22. The text of those sections of Title 35, U.S. Code 103 not included in this action can be found in a prior Office action.

23. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson in view of Jakob Nielsen et al., Improving System Usability Through Parallel Design (hereafter referred to as Nielsen).

24. Regarding dependent claim 11, Robinson does not specifically teach the most effective version of the web page is not identical to any of the versions tested. However, Nielsen taught the most effective version of the web page is not identical to any of the versions tested, the most effective version of the web page includes features from more than one version of the web page (Parallel design, page 29). It would have been obvious to one of ordinary skill in the art at the time the invention was made that incorporating Nielsen's merged versions of user interfaces in Robinson's system for measuring web page effectiveness would have improved system utility. The motivation would have been to have a version that is the best of the test web page.

25. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson in view of Wexler, USPN 5,960,409 (hereafter referred to as Wexler).

26. Regarding dependent claim 16, Robinson does not specifically teach the versions of the web page are static web pages, generated in advance, and further comprising: configuring the versions of the test page in effective parallel paths.

However, Wexler taught the versions of the web page are static web pages (column 4,



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lines 47-51), generated in advance (column 3, lines 36-40), and further comprising: configuring the versions of the test page in effective parallel paths (column 5, line 45-column 6, line 10). It would have been obvious to one of ordinary skill in the art at the time the invention was made that incorporating Wexler's parallel paths in Robinson's system for measuring web page effectiveness would have improved system efficiency. The motivation would have been to yield a faster final design.

### ***Response to Arguments***

27. Applicant's arguments filed October 27, 2004 have been fully considered but they are not persuasive.

28. Applicant argues – "Thus, Robinson's invention is concerned with altering only the contents on an area on a web page. Furthermore, since Robinson is only concerned with advertising, he does not teach or suggest having multiple versions of a web page."

a. Robinson specifically states that "different visitors to a web page can simultaneously see different ads" (column 4, lines 12-13). When the same web page is shown to "different visitors" but varied by the ads shown to the "different visitors", then Robinson provides multiple versions of a web page.

29. Applicant argues – "Rather, Robinson has a single web page, to which all access requests are directed. A small area of that web page, the Smart Ad box, is filled with one of a variety of advertisements. This is not equivalent to distributing web page access requests to the various versions of the test web page."

b. Robinson specifically states that “[s]pecial software algorithms are used to determine which ads are shown to which users; different visitors to a web page can simultaneously see different ads (column 4, lines 11-13).” Being that “different visitors” to the same web page simultaneously see different ads, Robinson taught various versions of a web page. Furthermore, being that “different visitors” are distributed to “different ads” by special algorithms, Robinson also taught distributing web page access requests.

30. Applicant argues – “Nielsen teaches away from the present invention, because he discusses using specific testers, rather than using the public at large by directing actual users to various versions of a web site.”

c. As recited in applicant’s claim language the “user” is a “user” of a testing web site. A “specific tester” is not excluded as a “user” of a testing web site.

d. Applicant draws the conclusion that Nielsen teaches away from the present invention but does not support this assertion with any reference to Nielsen’s article. Thus, examiner would conclude that applicant’s statement is unsupported by Nielsen’s article.

e. Lastly, Nielsen describes an embodiment using “specific testers”. This is an illustrative example of Nielsen’s invention, equivalent embodiments would includes other “users” without Nielsen explicitly mentioning all the types of “users”.

31. Applicant argues – “Furthermore, Nielsen does not teach or suggest directing users to different versions of a single web site ...”

f. Applicant admits that Nielsen directs different “specific testers” to various versions of a web site. “[Nielsen] discusses using specific testers, rather than using the public at large by directing actual users to various versions of a web site.” Being that previously the examiner has argued that “specific testers” are also users. It can be concluded that Nielsen also taught directing “users” to various versions of web sites.

32. Applicant argues – “Wexler does not discuss having different versions of a web page ...”

g. Wexler taught displaying banners on web pages (column 1, lines 49-51). Wexler also a banner can be changed (column 1, lines 54-58). By changing the banner “different version of a web page” are created.

### ***Conclusion***

33. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

34. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrice Winder whose telephone number is 571-272-3935. The examiner can normally be reached on Monday-Friday, 10:30 am-7:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Martin-Wallace can be reached on 571-272-6159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Patrice Winder". The signature is written in a cursive style with a large, looping initial "P".

Patrice Winder  
Primary Examiner  
Art Unit 2145

February 22, 2005